

STAR BANK

0-022A034

December 21, 1989

RECORDATION NO **16739** FILED 1425

JAN 22 1990 -11 05 AM

INTERSTATE COMMERCE COMMISSION

Secretary
Interstate Commerce Commission
12th Street & Constitution Avenue, N.W.
Washington, D.C. 20423

Attention: Room 2303

Re: Document for Recordation

Dear Sir or Madam:

Enclosed are two (2) original documents as described below, to be recorded pursuant to §11303 of Title 49 of the United States Code:

1. This document is a Mortgage and Security Agreement dated as of December 21, 1989.
2. The names and addresses of the parties to the document are as follows:
 - a. Kentucky and Tennessee Railway, Inc.
Highway 92 at Highway 1651
Stearns, Kentucky 42647
(Mortgagor)
 - b. Star Bank, National Association, Cincinnati
425 Walnut Street
Cincinnati, Ohio 45202
(Lender)
3. The description of the equipment covered by this document is:

06.09.12 11:27 AM

- a. One diesel locomotive manufactured in 1944 by ALCO, with serial number 72051 and Kentucky and Tennessee Railway number 102.
- b. One diesel locomotive manufactured in 1949 by ALCO, with serial number 76588 and Kentucky and Tennessee Railway number 105.

4. A fee of \$13.00 is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Elizabeth A. Galloway, Esquire
Taft, Stettinius & Hollister
1800 Star Bank Center
425 Walnut Street
Cincinnati, Ohio 45202

5. A short summary of the document to appear in the Index is as follows:

Mortgage and Security Agreement between Kentucky and Tennessee Railway, Inc., Highway 92 at Highway 1651, Stearns, Kentucky 42647, and Star Bank, National Association, Cincinnati, 425 Walnut Street, Cincinnati, Ohio 45202, dated as of December 21, 1989, and covering two diesel locomotives.

Yours truly,

STAR BANK, NATIONAL ASSOCIATION,
CINCINNATI

By: *Timothy S. Vanderhorst*
Name: Timothy S. Vanderhorst
Title: Assistant Vice President

1585m

Interstate Commerce Commission
Washington, D.C. 20423

1/24/90

OFFICE OF THE SECRETARY

Elizabeth A. Galloway, Esq.
Taft Stettinius & Hollister
1800 Star Bank Center
425 Walnut Street
Cincinnati, Ohio 45202

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/23/ 90 at 11:05am and assigned recordation number(s). 16739 & 14332-B

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

JAN 22 1990 -11 05 AM

MORTGAGE AND SECURITY AGREEMENT

INTERSTATE COMMERCE COMMISSION

THIS MORTGAGE AND SECURITY AGREEMENT (this "Mortgage") is made as of this 26 day of December, 1989, by and between KENTUCKY AND TENNESSEE RAILWAY, INC., a Kentucky corporation whose address is Highway 92 at Highway 1651, Stearns, Kentucky 42647 ("Mortgagor"), and STAR BANK, NATIONAL ASSOCIATION, CINCINNATI, a national banking association whose address is 425 Walnut Street, Cincinnati, Hamilton County, Ohio ("Lender").

WHEREAS, Mortgagor, Railum Inc., Lumber King, Inc., and Big South Fork Scenic Railway, Inc. (collectively, "Borrowers") and Lender have entered into a Loan Agreement of even date herewith (as amended from time to time, the "Loan Agreement"), and have delivered to Lender Borrowers' Revolving Credit Promissory Note of even date herewith in the principal sum of Three Hundred Thousand Dollars (\$300,000) which, if not sooner paid, is due and payable on December 21, 1990 (but is subject to one-year extensions as provided in the Loan Agreement) and Borrowers' Term Promissory Note in the principal sum of One Million Dollars (\$1,000,000) which, if not sooner paid, is due and payable on December 21, 1992.

NOW THEREFORE, TO SECURE TO LENDER (a) payment, with interest, of the indebtedness evidenced by the aforesaid Promissory Notes and any amendment, modification, extension or renewal thereof (collectively, the "Notes"), regardless of when advances under the Notes are made, (b) payment, with interest, of any additional advances under Paragraph 19 hereof, (c) payment and performance by Borrowers of all of their other obligations under the Loan Agreement, the Notes and the other Loan Documents (as defined in the Loan Agreement), (d) payment by Mortgagor to Lender as herein provided of all sums expended or advanced by Lender pursuant to any term or provision of this Mortgage, and (e) performance of each agreement of Mortgagor contained herein, Mortgagor does hereby mortgage, grant and convey to Lender that certain property located in the County of McCreary, Commonwealth of Kentucky, which is described in Exhibit A attached hereto and incorporated herein;

TOGETHER with all the buildings, structures and improvements now upon or hereafter erected on the above-described property, and all easements and appurtenant rights thereto, and all fixtures, furniture or other articles of personal property of Mortgagor, now or hereafter attached to, used in or about, or in connection with the above-described property, and all of the equipment described on Exhibit B attached hereto and incorporated herein by reference, whether or not located on the above-described property, all of which, including replacements and additions thereto, substitutes therefor and the proceeds thereof, shall be deemed to be and remain a part of the property covered by this Mortgage. All of the foregoing, including the real property described above, are herein referred to as the "Property."

Mortgagor covenants that Mortgagor is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is free, clear and unencumbered, and that Mortgagor will warrant and defend the title to the Property against all claims and demands of any persons whomsoever.

Mortgagor and Lender agree as follows:

1. PAYMENT OF INDEBTEDNESS. Mortgagor shall promptly pay all sums due to Lender (whether for principal, interest or otherwise) under the Loan Agreement, the Notes and the other Loan Documents and all other amounts herein agreed to be paid by Mortgagor when and as the same become due.

2. APPLICATION OF PAYMENTS. All payments received by Lender under the Loan Agreement, the Notes, the other Loan Documents and Paragraph 1 hereof shall be applied by Lender first to charges and advances (other than principal and interest) due by terms of the Loan Agreement, the Notes, this Mortgage or the other Loan Documents, then to accrued interest, and then to unpaid principal, or in such other order as Lender in its sole discretion may elect.

3. CHARGES; LIENS. Mortgagor shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain priority over this Mortgage by Mortgagor making payment, on or before the due date thereof, directly to the payee thereof. If Lender so requests, evidence of such payments shall be delivered promptly to Lender. Mortgagor shall promptly discharge any mechanic's, tax or other lien which has or may assert priority over this Mortgage.

4. PRESERVATION AND MAINTENANCE OF PROPERTY. Mortgagor shall keep the Property in good condition and repair and shall not commit waste or permit impairment or deterioration of the Property. Lender shall have the right, but not the duty, to inspect the Property at reasonable times and upon written notice to Mortgagor for the purpose of determining Mortgagor's compliance with the terms of this Mortgage.

5. PROTECTION OF LENDER'S SECURITY. If Mortgagor fails to perform any of the agreements contained in this Mortgage, or if any action or proceeding is threatened or commenced which may affect Mortgagor's or Lender's interest in the Property, including, but not limited to, eminent domain, insolvency or arrangements or proceedings involving a bankrupt, Lender, at Lender's option, upon notice to Mortgagor, may make such appearances, disburse such sums and take such action as Lender reasonably considers necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this Paragraph 5, with interest thereon at a rate two percent (2%) above the rate set forth in the Notes, shall become additional indebtedness of Mortgagor secured by this Mortgage. Such amounts shall be payable upon notice from Lender to Mortgagor requesting payment thereof. Nothing contained in this Paragraph 5 shall (i) require Lender to incur any expense or do any act hereunder or (ii) limit any other rights or remedies Lender may have under this Mortgage or otherwise.

6. COMPLIANCE WITH LAWS; TRANSFER OF PROPERTY. Mortgagor has complied and shall comply with all laws, ordinances and regulations of all public authorities relating to the Property, including, but not by way of limitation, any such law, regulation or ordinance relating to ecology, human health or the environment, and, without limiting the generality of the foregoing, no Hazardous Material is or shall be located on any of Mortgagor's real property or has been or shall be discharged or penetrating into any real property or surface or subsurface rivers or streams crossing or adjoining any of Mortgagor's real property or the aquifer underlying any of Mortgagor's real

property ("Hazardous Material" as used herein means any existing or future asbestos, polychlorinated biphenyls and petroleum products, solid wastes, ureaformaldehyde, discharges of sewer or effluent, paint containing lead and any other hazardous or toxic material, substance or waste which is defined, determined or identified by those or similar terms or is regulated as such under any such statute, law, ordinance, rule or regulation (whether now existing or hereafter promulgated) or any local, state or federal authority, or any judicial or administrative interpretation of any such statute, law, ordinance, rule or regulation, including but not limited to any material, substance or waste which is a hazardous substance within the meaning of 33 U.S.C. §1251 et seq., as amended, or 42 U.S.C. §9601 et seq., as amended, or a hazardous waste within the meaning of 42 U.S.C. §6901 et seq., as amended). Mortgagor shall not remove, demolish or materially alter any of the Property without the prior written consent of Lender. If all or any part of the Property or any interest therein is sold or transferred, or if any beneficial interest in Mortgagor is sold or transferred, or if any subordinate mortgage or other encumbrance of the Property or of any interest therein is made, without Lender's prior written consent, which consent may be withheld in Lender's sole discretion, then Lender may declare the entire amount secured hereby to be immediately due and payable in full. The foregoing sentence shall not apply to any circumstance under which federal law prohibits such acceleration of maturity.

7. HAZARD INSURANCE. Mortgagor shall keep any improvements now existing or hereafter erected on the Property insured against loss by fire and other hazards included within the term "extended coverage" in an amount not less than the full insurable value thereof or the maximum amount secured hereby, whichever is less. All premiums for insurance policies shall be paid by Mortgagor making payment, on or before the due date thereof, directly to the insurance carrier. If Lender so requests, evidence of such payments shall be delivered promptly to Lender. All policies of insurance shall provide that the coverage provided thereby shall not be cancelled without thirty (30) days prior written notice to Lender.

All insurance policies and renewals thereof shall include a standard mortgagee clause in favor of Lender. Mortgagor shall promptly furnish to Lender certificates of all insurance required to be maintained hereunder. In the event of loss, Mortgagor shall give prompt notice to the insurance carrier and Lender, and Lender may make proof of loss if not made promptly by Mortgagor. Each insurance company concerned is hereby authorized and directed to make payments for such loss (up to the amounts secured hereby) directly to Lender, instead of to Mortgagor and Lender jointly. Lender, at its option, may apply insurance proceeds to the amounts secured hereby, whether or not the same are then due and payable, in such order as Lender may determine, or to the restoration or repair of the damaged property; provided, however, that in the latter instance, Lender at any time, and from time to time, may require Mortgagor to furnish evidence satisfactory to Lender (i) of the availability of sufficient funds of Mortgagor to finally complete such restoration or repair or (ii) of the payment of all invoices, charges, costs and expenses incurred in connection with or relating to such restoration or repair.

If under Paragraph 16 hereof the Property is acquired by Lender, all right, title and interest of Mortgagor in and to any insurance policies and in

and to the proceeds thereof resulting from damage to the Property shall pass to Lender to the extent of the sums secured by this Mortgage.

8. CONDEMNATION. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or any part thereof, or for any conveyance in lieu of condemnation, are hereby assigned to Lender (up to the amounts secured hereby). Lender, at its option, may apply such proceeds to the amounts secured hereby, whether or not the same are then due and payable, in such order as Lender may determine, or to the restoration or repair of the damaged property; provided, however, that in the latter instance, Lender at any time, and from time to time, may require Mortgagor to furnish evidence satisfactory to Lender (i) of the availability of sufficient funds of Mortgagor to finally complete such restoration or repair or (ii) of the payment of all invoices, charges, costs and expenses incurred in connection with or relating to such restoration or repair.

9. RENTS, ISSUES AND PROFITS. The rents, issues and profits of the Property are hereby assigned to Lender as additional security for the obligations of Borrowers to Lender, and Lender shall have the right, at any time after default hereunder, without regard to the adequacy of any security for the obligations secured hereby and with or without the appointment of a receiver, to collect such rents, issues and profits, and apply the same less the cost of curing such default and less the cost of operation, maintenance and repair, and reasonable collection, management and attorneys fees, in reduction of the obligations secured hereby.

10. MORTGAGOR NOT RELEASED. Extension of the time for payment or modification of amortization of the amounts secured by this Mortgage granted by Lender to Borrowers or any successor in interest of Borrowers shall not operate to release, in any manner, the liability of the original Mortgagor or Mortgagor's successors in interest.

11. FORBEARANCE BY LENDER NOT A WAIVER. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

12. REMEDIES CUMULATIVE. All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. SUCCESSORS AND ASSIGNS BOUND; CAPTIONS. Subject to the terms of Paragraph 6 hereof, the agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Mortgagor. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

14. NOTICE. Any notice provided for in this Mortgage shall be deemed given when mailed by registered or certified mail, postage prepaid,

return receipt requested, to the addresses first listed above or at such other address as either Mortgagor or Lender may designate to the other by notice as set forth herein, except for any notice given to Mortgagor in another manner prescribed by applicable law.

15. SEVERABILITY; CONFLICT. In the event that any provision or clause of this Mortgage, the Loan Agreement, the Notes or the other Loan Documents conflicts with applicable law, such conflict shall not affect any other provisions of this Mortgage, the Loan Agreement, the Notes or the other Loan Documents which can be given effect without the conflicting provision, and to this end the provisions of this Mortgage, the Loan Agreement, the Notes and the other Loan Documents are declared to be severable. This Mortgage is given pursuant to the Loan Agreement, and any conflict between the terms hereof and the terms of the Loan Agreement shall be construed to the greater benefit of Lender.

16. ACCELERATION; REMEDIES. In the event (i) of any default under the Loan Agreement, the Notes or any of the other Loan Documents or (ii) Mortgagor fails to perform any of the agreements contained in this Mortgage to be performed by Mortgagor (the occurrence of any one of the events described in (i) and (ii) being herein referred to as a "default"), Lender, at its option, without notice, may declare the principal balance of the Notes, the interest accrued thereon and all other sums due under the Loan Agreement, the Notes, this Mortgage and the other Loan Documents to be immediately due and payable, and in any such event, Lender, in addition to all other remedies available at law or in equity, shall have the right forthwith to enter upon and take possession of the Property, and to let the Property and receive the rents, issues and profits thereof, to make repairs and to apply said rentals and profits, after payment of all necessary or proper charges and expenses, on account of the amounts hereby secured.

Unless prohibited by law, Mortgagor shall pay to Lender any and all sums, including expenses and reasonable attorney's fees, which Lender may incur or expend (a) in any proceeding to sustain the lien of this Mortgage or its priority or to defend against the liens or claims of any person or persons asserting priority over this Mortgage, (b) to discharge any claim or lien of any person or persons asserting priority over this Mortgage, or (c) in connection with any suit at law or in equity to enforce the Loan Agreement, the Notes or any of the other Loan Documents, to foreclose this Mortgage or to recover any indebtedness hereby secured; together with interest at the rate of two (2) percent above the rate provided in the Notes until paid. All such sums shall be a lien on the Property and shall be secured by this Mortgage.

In case of any sale of the Property hereunder, Mortgagor hereby expressly waives any equity of redemption, statutory right of redemption, dower, homestead and all other rights and exemptions of every kind in and to the Property, and agrees that the purchaser shall have absolute title to the Property in fee simple.

17. RELEASE. Upon payment of all sums secured by this Mortgage and termination of any commitment to lend which may exist pursuant to written agreement between Lender and Mortgagor, Lender shall discharge this Mortgage

without charge to Mortgagor. Mortgagor shall pay all costs of recordation of such release, if any.

18. SECURITY AGREEMENT AND FINANCING STATEMENT. This Mortgage constitutes a security agreement as to any part of the Property, including fixtures, which is of a nature that a security interest therein can be perfected under the Uniform Commercial Code as adopted in the Commonwealth of Kentucky. This Mortgage also constitutes a financing statement with respect to any and all property included in the Property which is or may become fixtures.

19. MAXIMUM PRINCIPAL AMOUNT. This Mortgage shall secure the payment of any amounts advanced, from time to time, by Lender to Borrowers under the Loan Agreement, the Notes, this Mortgage or the other Loan Documents. The maximum principal amount of unpaid loan indebtedness which may be outstanding at any time and secured hereby shall be One Million Three Hundred Thousand Dollars (\$1,300,000), exclusive of interest thereon, unpaid balances of advances made with respect to the Property for the payment of taxes, assessments, insurance premiums, costs incurred for the protection of the Property and other costs which the Lender is authorized by this Mortgage to pay on Mortgagor's behalf, all of which shall also be secured by this Mortgage.

IN WITNESS WHEREOF, Mortgagor and Lender have executed this Mortgage as of the date set forth above.

Signed and acknowledged
in the presence of
(as to both signatures):

KENTUCKY AND TENNESSEE RAILWAY, INC.

Linda D Baylin
Name: Linda D Baylin

By: David D King
Name: DAVID D. KING
Title: PRESIDENT

Elizabeth A Gellowsky
Name: Elizabeth A. Gellowsky

By: William Singleton
Name: William Singleton
Title: Vice President

Signed and acknowledged in
the presence of:

STAR BANK, NATIONAL ASSOCIATION,
CINCINNATI

Elizabeth A Gellowsky
Name: Elizabeth A. Gellowsky

By: Timothy S. Vanderhorst
Name: Timothy S. Vanderhorst
Title: Assistant Vice President

Linda D Baylin
Name: Linda D Baylin

STATE OF Ohio)
COUNTY OF Hamilton) SS:

The foregoing instrument was acknowledged before me this 20 day of December, 1989, by Darrell D. King and William Singleton, President and Vice President, respectively, of Kentucky and Tennessee Railway, Inc., a Kentucky corporation, on behalf of the corporation.

Linda D Bayliss
Notary Public

My commission expires: _____

LINDA D. BAYLISS
Notary Public, State of Ohio
My Commission Expires July 3, 1992

STATE OF OHIO)
COUNTY OF Hamilton) SS:

The foregoing instrument was acknowledged before me this 20 day of December, 1989, by Timothy S. Vanderhorst, Asst. Vice President of Star Bank, National Association, Cincinnati, a national banking association, on behalf of the association.

Linda D Bayliss
Notary Public

My commission expires: _____

LINDA D. BAYLISS
Notary Public, State of Ohio
My Commission Expires July 3, 1992

This instrument prepared by:

Elizabeth A. Galloway
Elizabeth A. Galloway
Taft, Stettinius & Hollister
1800 Star Bank Center
Cincinnati, Ohio 45202
(513) 381-2838

EXHIBIT A

Kentucky and Tennessee Railway, Inc. Mortgage and Security Agreement

A railroad extending from a connection with the Cincinnati, New Orleans and Texas Pacific Railroad, at Stearns, McCreary County, Kentucky in a westerly direction down and along Coopers Branch to its intersection with Paunch Creek and then still in a westerly direction down and along said Paunch Creek to its intersection with the Big South Fork of Cumberland River a distance of four and three-quarter miles. Thence in a northerly direction down and along said Big South Fork of Cumberland River a distance of three miles to the mouth of Rock Creek. Thence in a westerly direction up and along said Rock Creek to railroad survey station 605+00 located opposite the mouth of White Oak Creek a distance of three and seventy-one hundredth miles in all eleven and forty-six hundredth miles.

A branch line of the Kentucky and Tennessee Railway extending from its connection with the main line at main line survey station 601+70 at White Oak Junction in a westerly direction up and along White Oak Creek to railroad survey station 675+00 located at Cooperative a distance of one and thirty-nine hundredth miles.

Together with all rights-of-way along the line of this railroad and branch line. (The right-of-way is 100 feet along most of the track.)

SOURCE OF TITLE: A deed from Stearns Coal & Lumber Company to the Kentucky and Tennessee Railway dated January 29, 1903 and recorded in Deed Book 39, page

340 in the Whitley County Court Clerk's Office; a deed from Stearns Coal and Lumber Company to the Kentucky and Tennessee Railway dated September 5, 1925 and recorded in Deed Book 16, page 620 in the McCreary County Court Clerk's Office; a deed from Rock Creek Coal & Lumber Company by A. J. Cress, Commissioner to the Kentucky and Tennessee Railway dated September 19, 1905 and recorded in Commissioner's Book 2, page 514 in the Wayne County Court Clerk's Office; a deed from J. H. Keeney and Timothy Cockhill by Sallie E. Sandusky, Commissioner to the Kentucky and Tennessee Railway, dated March 25, 1907 and recorded in Commissioner's Book 2, page 598 in the Wayne County Court Clerk's Office; a deed from John Foster and Sarah Foster, his wife to the Kentucky and Tennessee Railway dated August 18, 1906 and recorded in Deed Book 40, page 170 in the Wayne County Court Clerk's Office and a deed from Stearns Coal & Lumber Company to the Kentucky and Tennessee Railway dated September 9, 1925 and recorded in Deed Book 18, page 16 in the McCreary County Court Clerk's Office.

EXHIBIT B

Kentucky and Tennessee Railway, Inc.
Mortgage and Security Agreement

- (a) One diesel locomotive manufactured in 1944 by ALCO with serial number 72051 and Kentucky and Tennessee Railway number 102.
- (b) One diesel locomotive manufactured in 1949 by ALCO with serial number 76588 and Kentucky and Tennessee Railway number 105.